

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

STICHTING PENSIOENFONDS ABP,

Plaintiff,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER, EDWARD
M. SCOLNICK, DAVID W. ANSTICE, and
PETER S. KIM

Defendants.

CASE NO. 2:05-CV-05060-SRC-CLW

NORGES BANK,

Plaintiff,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER,
EDWARD M. SCOLNICK, DAVID W.
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04021-SRC-CLW

[Caption continued on following page]

DEKA INVESTMENT GmbH, DEKA
INTERNATIONAL S.A. LUXEMBURG, DEKA
INTERNATIONAL (IRELAND) LIMITED,
DEKA FUNDMASTER
INVESTMENTGESELLSCHAFT mbH,
INTERNATIONAL FUND MANAGEMENT
S.A., MUNICH ERGO ASSET MANAGEMENT
GmbH, INTERNATIONALE FONDS SERVICE
AG, INTERNATIONALE
KAPITALANLAGEGESELLSCHAFT mbH,
METZLER INVESTMENT GmbH, and
FRANKFURTER SERVICE
KAPITALANLAGEGESELLSCHAFT mbH ,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER,
EDWARD M. SCOLNICK, DAVID W.
ANSTICE, and PETER S. KIM,

Defendants.

UNION ASSET MANAGEMENT HOLDING
AG, OPPENHEIM PRAMERICA ASSET
MANAGEMENT S.à.r.l., ERSTE-SPARINVEST
KAPITALANLAGEGESELLSCHAFT m.b.H.,
and OPPENHEIM
KAPITALANLAGEGESELLSCHAFT m.b.H.,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER,
EDWARD M. SCOLNICK, DAVID W.
ANSTICE, and PETER S. KIM,

Defendants.

[Caption continued on following page]

CASE NO. 07-CV-04022-SRC-CLW

CASE NO. 07-CV-04023-SRC-CLW

AFA LIVFÖRSÄKRINGSAKTIEBOLAG, AFA TRYGGHETSFÖRSÄKRINGSAKTIEBOLAG, AFA SJUKFÖRSÄKRINGSAKTIEBOLAG on its own behalf and on behalf of KOLLEKTIVAVTALSSTIFTELSEN TRYGGHETSFONDEN TSL, ALECTA PENSIONSFÖRSÄKRING ÖMSESIDIGT, SJUNDE AP-FONDEN, DANSKE INVEST ADMINISTRATION A/S, SWEDBANK ROBUR AB, AMF PENSION FONDFÖRVALTNING AB, ARBETSMARKNADSFÖRSÄKRINGAR PENSIONSFÖRSÄKRINGSAKTIEBOLAG, SKANDINAViska ENSKILDA BANKEN AB on its own behalf and on behalf of SEB INVESTMENT MANAGEMENT AB, SEB ASSET MANAGEMENT S.A. and GAMLA LIVFÖRSÄKRINGSAKTIEBOLAGET SEB TrYGG LIV,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V. GILMARTIN, JUDY C. LEWENT, ALISE S. REICIN, KENNETH C. FRAZIER, EDWARD M. SCOLNICK, DAVID W. ANSTICE, and PETER S. KIM,

Defendants.

[Caption continued on following page]

CASE NO. 07-CV-04024-SRC-CLW

ALLIANZ GLOBAL INVESTORS
KAPITALANLAGEGESELLSCHAFT mbH;
ALLIANZ GLOBAL INVESTORS
LUXEMBOURG S.A.; and ALLIANZ GLOBAL
INVESTORS IRELAND LIMITED,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER,
EDWARD M. SCOLNICK, DAVID W.
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04451-SRC-CLW

DWS INVESTMENT GmbH, PIONEER
INVESTMENTS
KAPITALANLAGEGESELLSCHAFT mbH,
DEUTSCHE ASSET MANAGEMENT
INVESTMENTGESELLSCHAFT mbH,
WIENER STÄDTISCHE VERSICHERUNG AG
VIENNA INSURANCE GROUP,
LIECHTENSTEINISCHE LANDESBANK
AKTIENGESELLSCHAFT, DWS (AUSTRIA)
INVESTMENTGESELLSCHAFT mbH,
LANDESBANK BERLIN INVESTMENT GmbH,
and LRI LANDESBANK RHEINLAND-PFALZ
INTERNATIONAL S.A.,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V.
GILMARTIN, JUDY C. LEWENT, ALISE S.
REICIN, KENNETH C. FRAZIER,
EDWARD M. SCOLNICK, DAVID W.
ANSTICE, and PETER S. KIM,

Defendants.

CASE NO. 07-CV-04546-SRC-CLW

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KBC ASSET MANAGEMENT NV, PIONEER INVESTMENT MANAGEMENT LTD., PIONEER INVESTMENT MANAGEMENT SGRpa, and PIONEER INVESTMENTS AUSTRIA GmbH,

Plaintiffs,

v.

MERCK & CO., INC., RAYMOND V. GILMARTIN, JUDY C. LEWENT, ALISE S. REICIN, KENNETH C. FRAZIER, EDWARD M. SCOLNICK, DAVID W. ANSTICE, and PETER S. KIM

Defendants.

CASE NO. 2:11-CV-06259-SRC-CLW

WHEREAS, pursuant to the Court's Order dated May 5, 2005, all pending and subsequently-filed Vioxx-related securities actions, including the above-captioned eight individual actions (the "Individual Actions") are "consolidated for all purposes" into *In re Merck & Co., Inc., Securities, Derivative & "ERISA" Litigation*, MDL No. 1658 (the "MDL");

WHEREAS, on October 6, 2011, the Parties to the following seven Individual Actions: *Stichting Pensioenfonds ABP v. Merck & Co., Inc., et al.*, No. 2:05-cv-05060-SRC-CLW; *AFA Livförsäkringsaktiebolag, et al. v. Merck & Co., Inc., et al.*, No. 07-cv-04024-SRC-CLW; *Allianz Global Investors Kapitalanlagegesellschaft MbH, et al. v. Merck & Co., Inc., et al.*, No. 07-cv-04451-SRC-CLW; *Norges Bank v. Merck & Co., Inc., et al.*, No. 07-cv-04021-SRC-CLW; *Deka Investment GmbH, et al. v. Merck & Co., Inc., et al.*, No. 07-cv-04022-SRC-CLW; *Union Asset Management Holding AG, et*

al. v. Merck & Co., Inc., et al., No. 07-cv-04023-SRC-CLW; and *DWS Investment GmbH, et al. v. Merck & Co., Inc., et al.*, No. 07-cv-04546-SRC-CLW, entered into a stipulation, which this Court “so ordered,” setting the deadline for Defendant Merck & Co., Inc. (“Merck”), all individual defendants other than Defendant Scolnick (the “Merck Individual Defendants” and, together with Merck, the “Merck Defendants”), and Defendant Scolnick (together, the “Defendants”) to move or otherwise respond to the Second Amended Complaint in *Stichting Pensioenfonds ABP v. Merck & Co., Inc., et al.*, No. 2:05-cv-05060-SRC-CLW (the “ABP Action”) to January 20, 2012, and stayed the time for Defendants to move or otherwise respond to the six remaining actions until 45 days after a decision on any motions in the ABP action;

WHEREAS, on November 8, 2011, the Parties to *KBC Asset Management NV, et al. v. Merck & Co., Inc., et al.*, No. 2:11-cv-06259-SRC-CLW (the “KBC Action”), entered into a stipulation, which this Court “so ordered,” in which they agreed to treat the KBC Action as one of the Individual Actions and extend Defendants’ time to move or otherwise respond to the KBC Action until 45 days after a decision on any motions to dismiss in the ABP Action;

WHEREAS, this Court issued an opinion on Defendants’ motions to dismiss the Second Amended Complaint in the ABP Action on August 1, 2012 (the “August 1 Opinion”);

WHEREAS, in the August 1 Opinion, this Court granted Defendants’ motions to dismiss the Rule 10b-5(b) claim to the extent predicated on statements the Court found actionable;

WHEREAS, in the August 1 Opinion, this Court granted Defendants' motions to dismiss the Rule 10b-5(a) and (c) "scheme liability" claim;

WHEREAS, in the August 1 Opinion, this Court granted the Merck Defendants' motion to dismiss the § 20(a) control person claim as to Defendants Gilmartin, Anstice, Frazier, Lewent, and Kim;

WHEREAS, in the August 1 Opinion, this Court granted Defendants' motions to dismiss the claim of common law fraud for inducing Plaintiff to purchase Merck stock;

WHEREAS, in the August 1 Opinion, this Court granted Defendants' motions to dismiss the claim of common law fraud for inducing Plaintiff to hold Merck stock;

WHEREAS, in the August 1 Opinion, this Court granted Defendants' motions to dismiss the claim of negligent misrepresentation for inducing Plaintiff to purchase Merck stock;

WHEREAS, in the August 1 Opinion, this Court granted Defendants' motions to dismiss the claim of negligent misrepresentation for inducing Plaintiff to hold Merck stock;

WHEREAS, in the August 1 Opinion, this Court granted Defendants' motions to dismiss the claim of civil conspiracy;

WHEREAS, the parties, claims, and allegations in the ABP Second Amended Complaint are substantially identical to the parties, claims, and allegations in the operative complaints in the other seven Individual Actions;

WHEREAS, the Parties do not wish to re-brief arguments already considered and ruled upon by this Court in the ABP Action;

IT IS HEREBY STIPULATED AND AGREED by and between the parties, through their undersigned counsel that:

1. The Parties to the above-captioned actions agree that any arguments raised by Defendants and/or Plaintiff in the ABP Action on Defendants' motions to dismiss the Second Amended Complaint shall not be re-briefed in the seven remaining Individual Actions, but shall be preserved for appeal as if such arguments had been raised in motions to dismiss and opposition to such motions in the seven remaining Individual Actions.

2. The Parties to the above-captioned actions agree that the claims dismissed in the August 1 Opinion in the ABP Action shall be deemed dismissed to the same extent in the seven remaining Individual Actions, but shall be preserved for appeal as if such arguments had been raised in motions to dismiss and opposition to such motions in the seven remaining Individual Actions. The claims dismissed in the August 1 Opinion are:

- a. The Rule 10b-5(b) claim to the extent predicated on statements the Court found actionable;
- b. The Rule 10b-5(a) and (c) "scheme liability" claim;
- c. The § 20(a) control person claim against Defendants Gilmartin, Anstice, Frazier, Lewent, and Kim;
- d. The common law fraud claim for inducing Plaintiff to purchase Merck stock;

e. The common law fraud claim for inducing Plaintiff to hold its

Merck stock;

f. The negligent misrepresentation claim for inducing Plaintiff to

purchase Merck stock;

g. The negligent misrepresentation claim for inducing Plaintiff to

hold its Merck stock; and

h. The civil conspiracy claim.

3. Nothing in this stipulation shall preclude the Parties to the seven

remaining Individual Actions from advancing, in connection with any motion to

dismiss, any argument that was not raised or decided in the ABP action.

4. Defendants have until September 17, 2012 to file and serve an

answer to the Second Amended Complaint in the ABP Action.

DATED: August 13, 2012

GRANT & EISENHOFER P.A.

By: Geoffrey C. Jarvis / by TMBG
Jay W. Eisenhofer
Geoffrey C. Jarvis
Jeff A. Almeida
485 Lexington Avenue, 29th Floor
New York, NY 10017
(646) 722-8500
gjarvis@gelaw.com

SAIBER LLC

Jeffrey W. Lorell
Marc E. Wolin
18 Columbia Turnpike, Suite 200
Florham Park, NJ 07932
(973) 622-3333
jwl@saiber.com

MOTLEY RICE LLC

Ann K. Ritter
28 Bridgeside Boulevard
Mt. Pleasant, SC 29464
(843) 216-9000

STURMAN LLC

Deborah Sturman
275 Seventh Avenue, 2nd Floor
New York, NY 10001
(212) 367-7017

Counsel for Plaintiffs Stichting Pensioenfonds ABP; Norges Bank; Deka Investment GmbH, Deka International S.A. Luxemburg, Deka International (Ireland) Limited, Deka FundMaster Investmentgesellschaft mbH, International Fund Management S.A., Munich Ergo Asset Management GmbH, Internationale Fonds Service AG, Internationale Kapitalanlagegesellschaft mbH, Metzler Investment GmbH, and Frankfurter Service Kapitalanlagegesellschaft mbH; Union Asset Management Holding AG, Oppenheim Pramerica Asset Management

*S.à.r.l., Erste-Sparinvest
Kapitalanlagegesellschaft m.b.H., and
Oppenheim Kapitalanlagegesellschaft mbH;
DWS Investment GmbH, Pioneer Investments
Kapitalanlagegesellschaft mbH, Deutsche
Asset Management Investmentgesellschaft
mbH, Wiener Städtische Versicherung AG
Vienna Insurance Group, Liechtensteinische
Landesbank Aktiengesellschaft, DWS
(Austria) Investmentgesellschaft mbH,
Landesbank Berlin Investment GmbH, and
LRI Landesbank Rheinland-Pfalz
International S.A., KBC Asset Management
NV, Pioneer Investment Management LTD.,
Pioneer Investment Management SGRpa, and
Pioneer Investments Austria GmbH*

DATED: August 13, 2012

**KESSLER TOPAZ MELTZER & CHECK
LLP**

By: John A. Kehoe / by RHB

David Kessler
Stuart L. Berman
John A. Kehoe
280 King of Prussia Road
Radnor, PA 19087
(610) 667-7706
dkessler@ktmc.com

SAIBER LLC

Arnold B. Calmann
One Gateway Center
10th Floor
Newark, NJ 07102-5311
(973) 622-3333
abc@saiber.com

*Counsel for Plaintiffs AFA
Livförsäkringsaktiebolag, AFA
Trygghetsförsäkringsaktiebolag, AFA
Sjukförsäkringsaktiebolag on its own behalf
and on behalf of Kollektivavtalsstiftelsen
Trygghetsfonden TSL, Alecta
pensionsförsäkring ömsesidigt, Fjärde AP-
Fonden, Sjunde AP-Fonden, Danske Invest
Administration A/S, Swedbank Robur AB, AMF
Pension Fondförvaltning ab,
Arbetsmarknadsförsäkringar
Pensionsförsäkringsaktiebolag,
Skandinaviska Enskilda Banken AB on its own
behalf and on behalf of SEB Investment
Management AB, SEB Asset Management
S.A., and Gamla Livförsäkringsaktiebolaget
SEB Trygg Liv; Allianz Global Investors
Kapitalanlagegesellschaft MbH, Allianz
Global Investors Luxembourg S.A., and
Allianz Global Investors Ireland Limited*

DATED: August 13, 2012

CRAVATH, SWAINE & MOORE LLP

By: 

Evan R. Chesler
Robert H. Baron
Karin A. DeMasi
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019-7475
(212) 474-1000
kdemasi@cravath.com

HUGHES HUBBARD & REED LLP

William R. Stein
Eric S. Parnes
1775 I Street, NW
Washington, DC 20006-2401
(202) 721-4600
parnes@hugheshubbard.com

*Counsel for Defendants Merck & Co., Inc.,
Raymond V. Gilmartin, Peter S. Kim, Alise S.
Reicin, Judy C. Lewent, Kenneth C. Frazier,
Richard C. Henriques, Jr., David W. Anstice,
Per Wold-Olsen, Lawrence A. Bossidy,
William G. Bowen, Johnetta B. Cole, Niall
FitzGerald, William B. Harrison, Jr., William
N. Kelley, Heidi G. Miller, Thomas E. Shenk,
Anne M. Tatlock and Samuel O. Thier.*

DATED: August 10, 2012

SCHULTE ROTH & ZABEL LLP

By: 

Martin L. Perschetz
Sung-Hee Suh
William H. Gussman, Jr.
919 Third Avenue
New York, NY 10022
(212) 756-2000
bill.gussman@srz.com

LOWENSTEIN SANDLER PC

Lawrence M. Rolnick
Sheila A. Sadighi
65 Livingston Avenue
Roseland, NJ 07068
(973) 597-2500
lrolnick@lowenstein.com

Counsel for Defendant Edward M. Scolnick

SO ORDERED: _____, 2012

Cathy L. Waldor
United States Magistrate Judge